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No. 99-366

In The

Supreme Court Of The United States

THE CHASE MANHATTAN BANK, ELIZABETH B. PARRY and HARRISON F. DURAND, as Trustees of a Trust under the Will of Sidney L. Parry, Deceased, for the Benefit of Elizabeth B. Parry et al.;

THE CHASE MANHATTAN BANK and DR. BERNARD L. PACELLA, as Trustees of a Trust under the Will of John Dallett, Deceased, for the Benefit of John Dallett, Jr.;

THE CHASE MANHATTAN BANK, as sole Trustee of a Trust under the Will of Elvira R. Evens, Deceased, for the Benefit of Grace Evens Stewart;

THE CHASE MANHATTAN BANK, as sole Trustee of a Trust under the Will of James N. Worcester, Deceased, for the Benefit of James N. Worcester, Jr., and

THE CHASE MANHATTAN BANK, as sole Trustee of a Trust under Agreement dated March 16, 1955 by Charles Anderson Dana for the Benefit of Sandra Leigh Dana Adolfsson,
Petitioners,

v.

GENE GAVIN, Commissioner of Revenue Services of the State of Connecticut,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Supreme Court of Connecticut correctly rule that, under Supreme Court precedent, the imposition of a state income tax on resident trusts does not violate the Due Process Clause or the Commerce Clause of the United States Constitution?

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This case arises out of the imposition in 1993 of the Connecticut state income tax on five Connecticut resident trusts. The Connecticut Supreme Court upheld a summary judgment in favor of the respondent Gene Gavin, Commissioner of Revenue Services of the State of Connecticut, based on a stipulation of facts. Pet. App. 49a.

The petitioner bank is the trustee of four testamentary trusts and one inter vivos trust. All of the trusts are resident trusts as defined by the Connecticut General Statutes and are subject to the Connecticut income tax. Conn. Gen. Stat. §§ 12-700(a) and 12-701(a)(4). Resp. App. A2 and A3. Each testamentary trust consists of property transferred by will of a decedent who at the time of his death was a resident of the state of Connecticut. Conn. Gen. Stat. § 12-701(a)(4)(C). Resp. App. A3. The wills that created the trusts were admitted to probate in Connecticut probate courts shortly after each testator's death. The inter vivos trust is an irrevocable trust consisting of the property of a person who was a resident of Connecticut at the time the property was transferred to the trust, Conn. Gen. Stat. § 12-701(a)(4)(D), and whose sole income beneficiary is a Connecticut domiciliary. Resp. App. A3. Neither the trustee nor the trust assets are located in the state of Connecticut. The assets of all of the trusts for 1993 consisted solely of cash and securities held in accounts of the petitioner bank as trustee.

REASONS FOR DENIAL OF THE PETITION

I. THE CONNECTICUT SUPREME COURT DECISION ACCORDS WITH CONTROLLING UNITED STATES SUPREME COURT DECISIONS, AND SATISFIES THE DUE PROCESS AND COMMERCE CLAUSES OF THE UNITED STATES CONSTITUTION.

A. The Due Process Clause

Contrary to the petitioner's claim, this case not only accords with Supreme Court precedent, it is mandated by this Court's ruling in *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992). In *Quill*, the Court rejected the notion that a corporation's lack of physical presence in the taxing state rendered any attempt by the state to tax the corporation's activities a violation of Due Process. *Id.* at 308. The Court upheld a North Dakota law requiring all corporations that regularly solicit business in the state to collect a use tax on property purchased for storage, use, or consumption within North Dakota, even if the corporation had no physical presence within the state. *Id.* at 302-03.

In *Quill*, the Court unified the Due Process analysis in the area of in personam jurisdiction with the Due Process analysis for jurisdiction to tax. The Court stated:

> Our due process jurisprudence has evolved substantially in the 25 years since *Bellas Hess*, particularly in the area of judicial jurisdiction. Building on the seminal case of *International Shoe Co. v. Washington*, 326 US. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945),

> we have framed the relevant inquiry as whether a defendant had minimum contacts with the jurisdiction "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.*, at 316, 66 S.Ct. at 158 (Quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278 (1940)). In that spirit, we have abandoned more formalistic tests that focused on a defendant's 'presence' within a State in favor of a more flexible inquiry into whether a defendant's contacts with the forum made it reasonable, in the context of our federal system of Government, to require it to defend the suit in that State.

Id. at 307. The Court concluded:

> Thus, to the extent that our decisions have indicated the Due Process Clause requires physical presence in a State for the imposition of duty to collect a use tax, we overrule those holdings as superseded by developments in the law of due process.

Id. at 308.

Although *Quill* concerned a use tax and the present case concerns an income tax, the *Quill* Due Process analysis and rule of law applies to this case with equal force. "The Due Process Clause 'requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax.'" *Id.* at 306, *quoting Miller Brothers Co. v. Maryland*, 347 U.S. 340, 344-345 (1954). A state can impose taxes constitutionally if "the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state."

Wisconsin v. J.C. Penney, Co., 311 U.S. 435, 444 (1941). The "simple but controlling question is whether the state has given anything for which it can ask return." *Id.*

In the present case, the Connecticut Supreme Court recognized that the *Quill* statement of the minimum contacts test in tax jurisprudence has superseded the earlier physical presence requirement, and correctly stated the issue as whether "the contacts between the testamentary trusts and Connecticut are sufficient constitutionally for Connecticut to treat the trusts as if they were domiciliaries of the state and, therefore, for Connecticut to tax the undistributed income of the trusts." *Chase Manhattan Bank, Trustee v. Gene Gavin, Commissioner of Revenue Services*, 249 Conn. 172, 188 (1999) Pet. App. 16a. The Court then proceeded painstakingly to analyze the contacts between the trusts and Connecticut, and concluded:

> the viability of the trust as a legal entity is inextricably intertwined with the benefits and opportunities provided by the legal and judicial systems of Connecticut, and its legal viability is inextricably intertwined with its economic vitality. Neither its economic vitality nor its legal viability trumps the other for purposes of due process and taxation. These contacts with Connecticut are sufficiently "fiscal" in nature to satisfy the due process clause, and gave the testamentary trusts fair warning that they were subject to its tax jurisdiction.

Id. at 200, Pet. App. 30a.

As the Court discussed, the contacts between Connecticut and the testamentary trusts easily fulfills the Due Process criteria. First, the trusts were created by Connecticut residents to benefit those of their choosing. The trusts

owe their existence to Connecticut law. In creating these testamentary trusts, the settlors exercised a right or a privilege granted by Connecticut law.[1/] "Connecticut's laws assure the continued existence of the trusts as mechanisms for the disposition of the testators' property according to the terms of the trusts as provided by the respective wills." *Chase Manhattan Bank, Trustee v. Gene Gavin Commissioner of Revenue Services*, 249 Conn. at 193. Pet. App. 21a.

The probating of the trusts in Connecticut is also a substantial contact, giving Connecticut courts ongoing powers over the trusts pursuant to Connecticut law.[2/] Once

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1/ "All of the testamentary trusts were established under their respective wills because the laws of [the state of Connecticut] provide for such establishment." *Chase Manhattan Bank, Trustee v. Gene Gavin Commissioner of Revenue Services*, 249 Conn. 172, 192 (1999), Pet. App. 21a, *citing Blodgett v. Bridgeport City Trust Co.*, 115 Conn. 127, 142 (1932).

2/ In addition to approving the appointment of Chase Manhattan (or a predecessor bank) as trustee, each Connecticut Court pursuant to the General Statutes had the authority:

> (1) To call the executor to account for the trust estate. Conn. Gen. Stat. § 45a-98, Resp. App. A6; (2) to require a bond of the trustee under appropriate circumstances even where the will excuses a bond. Conn. Gen. Stat. § 45a-473, Resp. App. A18; (3) to fill a vacancy in the office of trustee if a trustee were to resign or decline to serve; Conn. Gen. Stat. § 45a-474, Resp. App. A19; (4) to remove a testamentary trustee for cause and fill the vacancy thereby created. Conn. Gen. Stat. § 45a-242, Resp. App. A16; (5) To authorize the sale of real estate held by the trustee. Conn. Gen. Stat. § 45a-164, Resp. App. A7; (6) to require the trustee to render periodic accounts, to hold hearings upon interim and final accounts, to pass on the propriety of such accounts, and to make such orders as are necessary to secure the due execution of the trustee's duties. Conn. Gen.

again Connecticut law is relied upon for the review, approval and protection of the trusts. The specific duties of the probate courts varied as to each trust, but in all events the trusts were protected by the requirement for a final accounting, statutory standards for trustees, and the availability of a forum in which to litigate issues relating to the trust. Conn. Gen. Stat. §§ 45a-175, and 45a-177, 45a-178 and 45a-179.[3/] Resp. App. A12-A15. If at any time any beneficiary wishes to question the administration of the trust by the trustee, the Connecticut Probate Court would have jurisdiction to resolve the dispute.[4/] Like the individual domiciliary, the resident trust may invoke the protection of

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Stat. §§ 45a-177, 45a-178 and 45a-179, Resp.App. A12-A15; (7) upon the allowance of interim and final accounts, to determine the rights of the trustee and the interested parties. Conn. Gen. Stat. §§ 45a-175, 45a-177, 45a-178 and 45a-179, Resp. App. A12-15; and (8) to make appropriate orders regarding the distribution of the trust assets upon its termination. Conn. Gen. Stat. §§ 45a-481 through 45a-483, Resp. App A20-A22.

3/ In the case of the Dallett and Worcester trusts, there were periodic renderings of accounts as required by Conn. Gen. Stat. § 45a-177. For the Worcester trust there were thirty-two annual filings until 1969, two biannual filings from 1969 to 1971, and eight triennial accountings since 1971. Chemical Bank, as co-trustee, filed six periodic reports for the Dallet trust. As to the Stewart trust, although triennial accountings were excused by the decedent's will, the trustee was required and did file a 70 page final accounting with the probate court. A final accounting is also required in the Parry testamentary trust.

4/ The Connecticut courts determine and settle the rights between and among trustee, beneficiaries, and successor trustee, if any. Questions, such as the propriety of investments, may be raised in the Connecticut courts, and if appropriate, the court may refuse to approve the interim or final accounting absent corrective measures.

Connecticut law and thus be responsible to share the costs of government.

A testamentary trust of a state resident, which has been probated in the courts of the state, has a relationship to the state distinct from the relationship, if any, between the state and the trustee or trust assets. The state's power to resolve disputes over the trust and to order accountings to protect the trust corpus and beneficiaries from potential malfeasance by the trustee reflects the state's justifiable jurisdiction over the trust. *Chase Manhattan Bank, Trustee v. Gene Gavin Commissioner of Revenue Services, supra*, 249 Conn. at 201, Pet. App. 31a, *quoting District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539, 540 (D.C. App. 1997).

The Connecticut Supreme Court applied the same minimal contacts analysis to the inter vivos trust. First, the noncontingent beneficiary of the inter vivos trust is a Connecticut domiciliary. As a Connecticut domiciliary she has enjoyed all of the protections and benefits afforded to other domiciliaries. Her right to the eventual receipt and enjoyment of the accumulated income is protected by the laws of Connecticut. *Id.* at 204, Pet. App. 35a.

Connecticut courts also have jurisdiction to entertain actions by trustees, settlors or beneficiaries of inter vivos trusts to require accounting of actions taken by the trustee. Conn. Gen. Stat. § 45a-175. Resp. App. A9. *See United States Trust Co. v. Bohart*, 197 Conn. 34 (1985). Furthermore, the probate court has the authority, on its own motion or upon the application and complaint of an interested person, to remove a trustee for misconduct or neglect in the exercise of his or her duties. Conn. Gen. Stat. § 45a-242. Resp. App. A16. The Connecticut Supreme Court concluded, "just as a state may tax all of the present income of a domiciliary, irrespective of its place or origin or the nature

of its source, a state may, on the basis of the same justification, tax the income of an inter vivos trust that is accumulated for the ultimate benefit of a noncontingent domiciliary, and that is subject to her ultimate power of disposition. " *Chase Manhattan Bank, Trustee v. Gene Gavin, Commissioner of Revenue Services*, 249 Conn. at 205, Pet. App. 35a, *citing McCulloch v. Franchise Tax Board*, 61 Cal. 2d 186, 390 P.2d 412, appeal dismissed, 379 U.S. 133 (1964).

These contacts, benefits, and protections are more than enough to subject the trust income to taxation in the state of Connecticut. The trusts were created in this state, by Connecticut residents, and they reside in the state, benefit from the protection of state law, and are protected by the state probate courts, regardless of the physical presence of the trustee or trust assets.

Accordingly, the Court correctly applied controlling Supreme Court authority to conclude that the resident trust tax satisfies due process requirements. To avoid this result, the petitioner argues that *Safe Deposit & Trust Co. of Baltimore, Md. v. Commonwealth of Virginia*, 280 U.S. 83 (1929), a seventy-year old case based on the superseded physical presence and double taxation analyses, controls here. This claim is erroneous for several reasons. First, *Quill* specifically overrules prior decisions requiring physical presence in a State for the imposition of a tax, because such decisions have been "superseded by developments in the law of due process." *Quill Corporation v. North Dakota, supra*, 504 U.S. at 308. Second, *Safe Deposit's* focus on the avoidance of a double tax by concentrating on physical presence has been discredited. The "risk of double taxation of intangibles has long been abandoned as a limitation on taxation under the due process clause. *Curry v. McCanless*, 307 U.S. 357, 363, 59 S.Ct. 900 (1939)." *Chase Manhattan Bank, Trustee v. Gene Gavin, Commissioner of*

Revenue Services, *supra*, 249 Conn. at 206-207, Pet. App. 37a. Furthermore, the Supreme Court has affirmed that a domiciliary of a state who is a beneficiary of an out-of-state trust may be taxed on the trust income received by her, even though the other state also taxed the value of the trust property that generated the income. *Guaranty Trust Co. v. Virginia*, 305 U.S. 19 (1938).

In addition, *Safe Deposit* is factually distinguished because it involves an *ad valorem* tax on an inter vivos trust whereas this case involves an income tax. In *Safe Deposit*, a Virginia domiciliary transferred to the Safe Deposit & Trust Company of Baltimore, Maryland by deed, $50,000 in stocks and bonds for the benefit of his two sons. The court found that only the state where the property was located, Maryland, had the authority to impose an *ad valorem* tax. As discussed above, it is well established that a state may tax all of the income of one of its domiciliaries, irrespective of the source of that income, geographical or otherwise. *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995). The relationship between the state of Connecticut and the trusts at issue in this case are sufficiently close to justify the state's treatment of the trusts as residents for purposes of income taxation.

Accordingly, the Connecticut Supreme Court decision here did not "overrule" *Safe Deposit*, as the petitioner asserts, petitioner's brief at 20, nor does it conflict with controlling Supreme Court precedent. Rather, it correctly applies current Supreme Court law as articulated in *Quill*.

B. The Commerce Clause

Similarly, the Connecticut Court correctly applied longstanding Supreme Court precedent to conclude that the

resident trust tax comports with the Commerce Clause.[5] Under the established criteria set forth by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), the income tax on the resident trusts does not violate the Commerce Clause. In *Quill*, the Court reiterated the *Complete Auto* test: "[W]e will sustain a tax against a Commerce Clause challenge so long as the tax [1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the State." *Quill Corp. v. North Dakota*, *supra*, 504 U.S. at 311.

"The first and fourth prongs, which require a substantial nexus and relationship between the tax and state-provided services, limit the reach of the state taxing authority so as to ensure that state taxation does not unduly burden interstate commerce." *Quill Corp. v. North Dakota*, *supra*, 504 U.S. at 313. The first and fourth prongs of the *Complete Auto* test are closely connected to the nexus requirement of Due Process. As discussed in detail above, the protection, opportunities and benefits given by the state to the creation and maintenance of the trusts satisfy the first and fourth prongs of the Commerce Clause test. As the court below concluded, the creation of the trusts under Connecticut law, the primary jurisdiction of its courts, the absolute requirement of a final accounting, the situs of the trust in the state, and the other contacts discussed above, constitute sufficient minimal contacts and a substantial nexus to Connecticut.

In addition, with regard to the fourth prong, the income tax is a general revenue tax (as distinguished from a

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[5] The petitioner does not argue that the Connecticut Supreme Court's decision conflicts with any specific ruling of this or other courts with regard to the Commerce Clause.

user charge for specified state-provided services). As a general revenue measure, it is "a means of distributing the burden of the costs of government." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 623 (1981) *quoting Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-522 (1937). The trust entity's domicile in Connecticut also constitutes the basis of a tax on all income. *Oklahoma Tax Commission v. Chickasaw Nation, supra*, 515 U.S. 450.

Similarly, the resident trust income tax satisfies the second and third prongs of the *Complete Auto* test. Although the petitioner's entire focus is on the risk of possible multiple taxation without provision for apportionment, there is no actual multiple taxation. The Connecticut Supreme Court rejected the petitioner's speculation that a Connecticut testator or settlor would choose a Connecticut bank over an out-of-state bank, as trustee solely because of the potential for future multiple taxation of some portion of the trust's future income. *Chase Manhattan Bank, Trustee v. Gene Gavin, Commissioner of Revenue Services, supra*, 249 Conn. at 212-213, Pet. App. 42a-43a. "The choice of bank as trustee is likely to be animated by many imponderables, among them: the prior experience of the testator or settlor; the financial performance of the various banks in the pool of available choices; the current location of the likely beneficiaries; the current location of the various banks in the pool; and, of course, the tax implications, if any. We simply are not sufficiently persuaded of the underlying multifaceted decision as the choice of a trustee is likely to be made." *Id.* This analysis and conclusion fully comports with a recent decision of this Court: "'The degree to which these very general suggestions might prove right or wrong, however, is not really significant; the point is simply that all of them are nothing more than suggestions, pointedly couched in terms

of assumption or supposition.'" *Id.* at 213, Pet. App. 43a, *quoting General Motors Corp. v. Tracy*, 519 U.S. 278, 308-309 (1997) (Court held that Ohio's differential tax treatment of natural gas sales by public utilities and independent marketers did not violate the Commerce Clause).

Moreover, apportionment is provided by the availability of a credit for taxes paid to another jurisdiction on income derived from real or tangible personal property, or from a business, trade, occupation or profession. Conn. Gen. Stat. § 12-704(a). Resp. App. A5. Although the credit does not extend to income derived from intangible personalty, such as dividends and interest, the state is not required to provide apportionment as to that income, because the taxation of the trusts is comparable to the taxation of Connecticut residents on income earned on intangibles.[6] "The Supreme Court has long recognized that a state may tax the entire income of an individual residing in that state regardless of the source of the income: 'Domicil[e] itself affords a basis for such taxation. Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government.'" *District of Columbia v. Chase Manhattan Bank*, *supra*, 689 A.2d at 545 *quoting New York ex rel. Cohn v. Graves*, 300 U.S. 308 (1937). In addition, not all risks of multiple taxation run afoul of the dormant Commerce Clause, because it is not the purpose of the clause to relieve those engaged in interstate commerce from bearing their fair share of the state tax burdens. *Complete Auto Transit, Inc. v. Brady*, *supra*, 430 U.S. at 279.

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[6] As the court below held, the relationship between the state of Connecticut and the trusts are sufficiently close to justify the state's treatment of the trusts as residents for purposes of income taxation. *Chase Manhattan Bank, Trustee v. Gene Gavin, 249 Conn. at 203*, Pet. App. 33a. *See also District of Columbia v. Chase Manhattan Bank*, *supra*, 689 A.2d at 545.

Therefore, even if multiple taxation were to occur at some time in the future, there would be no violation of the Commerce Clause, because the taxation of these trusts is comparable to the taxation of Connecticut residents on income earned on intangibles. *See Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450 (1995).[7]

Finally, with regard to the third prong of the *Complete Auto* test, the resident trust income tax does not discriminate against interstate commerce. There is no discrimination based upon location of trustees. Connecticut trustees are not entitled to any exclusive benefits, credits or deductions, and no extra burdens are borne by out-of-state trustees.

In sum, the Connecticut Supreme Court fully and correctly applied controlling precedent of this Court to conclude that the *Complete Auto* test is satisfied and there is absolutely no basis for the petitioner's challenge under the Commerce Clause.

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[7] *See also Guaranty Trust Co. v. Virginia*, 305 U.S. 19 (1938) (Court held that a domiciliary of a state who is a beneficiary of an out-of-state trust may be taxed on the trust income received by her, even though the other state also taxed the value of the trust property that generated the income); *Greenough v. Tax Assessor*, 331 U.S. 486, 490 (1947) (Court held that state where trustee resided had authority to impose an *ad valorem* tax on intangibles held by an out-of-state trust and Court noted interests of the state which is the "seat of a testamentary trust").

II. THE CONNECTICUT SUPREME COURT DECISION DOES NOT CONFLICT WITH ANY OTHER STATE COURT DECISIONS POST-*QUILL*.

The petitioner also attempts to manufacture a conflict between the Connecticut decision below and the decisions of the highest courts of other states. To support this argument, the petitioner cites decisions by other states that were issued before *Quill*, and which rest on the same outmoded due process analyses that were rejected in *Quill*.[8/]

The fact of the matter is that the Connecticut decision here accords with the only other state court case on this subject that has followed and applied *Quill*, *District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539 (D.C. App. 1997). As that court stated, rejecting a similar argument in that case from the same petitioner, "[T]hese cases -- all decided before the Supreme Court's 1992 decision in *Quill* -- take an overly formalistic view of the due process analysis and rely far too heavily on the presence of persons and tangible property within the taxing jurisdiction." *District of Columbia v. Chase Manhattan Bank*, *supra*, 689 A.2d at 545. "*Quill* explicitly rejected the idea that a state's power to tax turns on the physical presence of the taxed entity within the taxing jurisdiction." *Id.* at 546. The *District of Columbia* court upheld a resident trust income tax on a trust created by the will of an individual who died while domiciled in the District, where the trustee, trust assets, and

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[8/] The petitioner cites the following cases that were issued before *Quill*: *Swift v. Director of Revenue*, 727 S.W.2d 880 (Mo. 1987); *Blue v. Department of Treasury*, 462 N.W.2d 762 (Mich. Ct. App. 1990); *Pennoyer v. Taxation Div. Dir.*, 5 N.J. Tax 386, 397 (Tax Ct. 1983); *Taylor v. State Tax Comm'n*, 85 A.D. 2d 821, 822 (3rd Dep't. 1981); *Potter v. Taxation Div. Dir.*, 5 N.J. Tax 399 (1983).

trust beneficiaries were all located outside the District. *Id.* at 540.

Any previous division among the state courts has clearly been resolved by the thorough due process analysis and standard set forth in *Quill*. The Connecticut Supreme Court's decision in this case and the District of Columbia's ruling in *Chase Manhattan Bank* demonstrate that the rule of law in *Quill* provides the guidance and controlling precedent for the issues raised in this petition. Certification is not necessary or appropriate because the state courts are properly applying the Due Process standard articulated in *Quill*. Petitioners here ask the Court to reopen a settled question in the hope that they can have the law changed in their favor.

The numerous legal benefits and opportunities of resident trusts are comparable to those legal benefits and opportunities that justify the imposition of taxes on the income of individual domiciliaries of the state. As found by the Connecticut Supreme Court, the Due Process criteria set forth in *Quill* is more than adequately met in the case of these resident trusts.

CONCLUSION

The Connecticut Supreme Court's decision in this case is consistent with this Court's rulings in *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992) and *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), does not conflict with the decisions of any other state or federal courts applying this precedent and fully and correctly analyzes federal constitutional requirements as they apply to this case. Accordingly, review by the Court is not warranted and respondent respectfully requests that the petition be denied.

Respectfully submitted,

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GENE GAVIN, Commissioner of Revenue Services of the State of Connecticut,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

APPENDIX

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Sec. 12-700. Imposition of tax on income. Rate. (a) There is hereby imposed on the Connecticut taxable income of each resident of this state a tax at the rate of four and one-half per cent of such Connecticut taxable income for taxable years commencing on or after January 1, 1992. The provisions of this subsection shall apply to resident trusts and estates and, wherever reference is made in this subsection to residents of this state, such reference shall be construed to include resident trusts and estates, provided any reference to a resident's Connecticut adjusted gross income derived from sources without this state or to a resident's Connecticut adjusted gross income shall be construed, in the case of a resident trust or estate, to mean the resident trust or estate's Connecticut taxable income derived from sources without this state and the resident trust or estate's Connecticut taxable income, respectively.

. . .

(d) The provisions of this chapter shall be applicable with respect to any person, trust or estate. Whenever, in this chapter, "any person" appears without "trust or estate", the reference to any person shall be deemed to include any trust and any estate unless, in the context of the particular provision, the reference to any person could not be applicable in the case of a trust or in the case of an estate.

Sec. 12-701. Definitions. (a) For purposes of this chapter:

(1) "Resident of this state" means any natural person (A) who is domiciled in this state, provided if a person (i) maintains no permanent place of abode in this state, (ii) maintains a permanent place of abode elsewhere and (iii) spends in the aggregate not more than thirty days of the taxable year in this state, such person shall be deemed not a resident or (B) who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three days of the taxable year, unless such person, not being domiciled in this state, is in the armed forces of the United States.

. . .

(4) "Resident trust or estate" means (A) the estate of a decedent who at the time of his death was a resident of this state, (B) the estate of a person who, at the time of commencement of a case under Title 11 of the United States Code, was a resident of this state, (C) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of his death was a resident of this state, and (D) a trust, or a portion of a trust, consisting of the property of (i) a person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable, (ii) a person who, if the trust was revocable at the time the property was transferred to the trust, and has not subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust or (iii) a person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a

resident of this state at the time the trust became irrevocable. For purposes of this chapter, if any trust or portion of a trust, other than a trust created by the will of a decedent, has both resident and nonresident noncontingent beneficiaries, the Connecticut taxable income of the trust, as defined in subdivision (9) of this subsection, shall be modified as follows: The Connecticut taxable income of the trust shall be the sum of all such income derived from or connected with sources within this state and that portion of such income derived from or connected with all other sources which is derived by applying to all such income derived from or connected with all other sources a fraction the numerator of which is the number of resident noncontingent beneficiaries and the denominator of which is the total number of noncontingent beneficiaries. As used in this subdivision, "noncontingent beneficiary" means a beneficiary whose interest is not subject to a condition precedent.

Sec. 12-704. Credits for income taxes paid to other states. (a) Any resident or part-year resident of this state shall be allowed a credit against the tax otherwise due under this chapter in the amount of any income tax imposed on such resident or part-year resident for the taxable year by another state of the United States or a political subdivision thereof or the District of Columbia or any province of Canada on income derived from sources therein and which is also subject to tax under this chapter. In the case of a resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the taxpayer's Connecticut adjusted gross income derived from or connected with sources in the other taxing jurisdiction bears to such taxpayer's Connecticut adjusted gross income under this chapter. In the case of a part-year resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this chapter that the amount of the taxpayer's Connecticut adjusted gross income derived from or connected with sources in the other jurisdiction during the period of residency bears to such taxpayer's Connecticut adjusted gross income during the period of residency under this chapter, nor shall the allowance of the credit provided under this section reduce the tax otherwise due under this chapter to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Connecticut adjusted gross income.

Sec. 45a-98. General powers. Courts of probate in their respective districts shall have the power to grant administration of intestate estates of persons who have died domiciled in their districts and of intestate estates of persons not domiciled in this state which may be granted as provided by section 45a-303, to admit wills to probate of persons who have died domiciled in their districts or of nondomiciliaries whose wills may be proved in their districts as provided in section 45a-287, and to call executors, administrators, trustees, guardians and conservators to account concerning the estates entrusted to their charge, and to make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them by the laws of this state.

Sec. 45a-164. Sale or mortgage of real property. (a) Upon the written application of the conservator of the estate of any person, guardian of the estate of any minor, administrator or trustee appointed by the court, including a trustee of a missing person, or the executor or trustee under any will admitted to probate by the court, after public notice and other notice which the court may order and after hearing, the court may authorize the sale or mortgage of the whole or any part of, or any easement or other interest in, any real property in this state of such person, minor, missing person, deceased person or trustee, or of any real property the legal title to which has been acquired by such administrator, executor or trustee, if the court finds it would be for the best interest of the parties in interest to grant the application.

(b) The court may empower the conservator, guardian, administrator, executor or trustee to execute a conveyance of such property or to execute a note and a mortgage to secure such property upon giving a probate bond faithfully to administer and account for the proceeds of the sale or mortgage according to law, unless the court finds that there in force, for such fiduciary, a probate bond in an amount and with security determined in accordance with section 45a-139 or unless the bond is dispensed with in accordance with section 45a-169. The application shall set forth a description of the property to be sold or mortgaged.

(c) After a hearing, the court may authorize that the property be sold to the fiduciary either directly or under the provisions of section 45a-167, except that if a public sale is ordered, the fiduciary may be the purchaser only if the sale is made under section 45a-167. In the case of any

proposed sale to a fiduciary, any notice sent to interested parties and any public notice shall indicate that the fiduciary is the proposed purchaser.

(d) If any person having an interest in such real property is not in being or is not ascertained or is under a disability, the court shall appoint a guardian ad litem to represent the interest of such person at the hearing. A guardian ad litem shall not be necessary if such person is represented by a guardian or by a conservator, unless the sale of the property is to such guardian or conservator or such guardian or conservator has a potential conflict as an applicant or otherwise.

(e) The order and the sale or mortgage under the order shall be conclusive upon all persons then or thereafter existing whose interests have been so represented.

Sec. 45a-175. Jurisdiction of accounts of fiduciaries. Appointment of auditor to examine accounts, when. (a) Courts of probate shall have jurisdiction of the interim and final accounts of testamentary trustees, trustees appointed by the courts of probate, conservators, guardians, persons appointed by probate courts to sell the land of minors, executors, administrators and trustees in insolvency, and, to the extent provided for in this section, shall have jurisdiction of accounts of the actions of trustees of inter vivos trusts and attorneys-in-fact acting under powers of attorney created in accordance with section 45a-562.

(b) A trustee or settlor or an inter vivos trust or an attorney-in-fact or the grantor of such power of attorney may make application to the court of probate for the district where the trustee or the attorney-in-fact has his or its principal place of business or to the court of probate for the district where the trustee or any one of them or the settlor or the attorney-in-fact or the grantor of the power resides or, in the case of a deceased settlor or grantor, to the court of probate having jurisdiction over the estate of the settlor or grantor for submission to the jurisdiction of the court of an account for allowance of the trustee's or attorney's actions under such trust or power.

(c)(1) Any beneficiary of an inter vivos trust may petition a court of probate having jurisdiction under this section for an accounting by the trustee or trustees. The court may, after hearing with notice to all interested parties, grant the petition and require an accounting for such periods of time as it determines are reasonable and necessary on finding that: (A) The beneficiary has an interest in the trust sufficient to entitle him to an accounting, (B) cause has been

shown that an accounting is necessary, and (C) the petition is not for the purpose of harassment.

(2) A court of probate shall have jurisdiction to require an accounting under subdivision (1) of subsection (c) of this section if (A) a trustee of the trust resides in its district, (B) in the case of a corporate trustee, the trustee has its principal place of business in the district, (C) any of the trust assets are maintained or evidences of intangible property of the trust are situated in the district, or (D) the settlor resides in the district.

(3) As used in subdivision (1) of subsection (c) of this section, "beneficiary" means any person currently receiving payments of income or principal from the trust, or who may be entitled to receive income or principal or both from the trust at some future date, or the legal representative of such person.

(d) The action to submit an accounting to the court, whether by an inter vivos trustee or attorney acting under a power of attorney created in accordance with section 45a-562 or whether pursuant to petition of another party, shall not subject the trust or the power of attorney to the continuing jurisdiction of the probate court.

(e) If the court finds such appointment to be necessary and in the best interests of the estate, the court upon its own motion may appoint an auditor to be selected from a list provided by the probate court administrator, to examine accounts over which the court has jurisdiction under this section, except those accounts on matters in which

the fiduciary or cofiduciary is a corporation having trust powers. The probate court administrator shall promulgate regulations in accordance with section 45a-77 concerning the compilation of a list of qualified auditors. Costs of the audit may be charged to the fiduciary, any party in interest and the estate, in such proportion as the court shall direct if the court finds such charge to be equitable. Any such share may be paid from the fund established under section 45a-82, subject to the approval of the probate court administrator, if it is determined that the person obligated to pay such share is unable to pay or to charge such amount to the estate would cause undue hardship.

(f) Upon the allowance of any such account, the court shall determine the rights of the fiduciaries or the attorney-in-fact rendering the account and of the parties interested in the account, subject to appeal as in other cases. The court shall cause notice of the hearing on the account to be given in such manner and to such parties as it directs.

Sec. 45a-177. Periodic rendering of accounts; hearing. Nature of account. Exceptions. (a) All conservators, guardians, persons appointed by the court of probate to sell land of minors and trustees, including those entrusted with testamentary trusts unless excused by the will creating the trust, shall render periodic accounts of their trusts under oath to the court of probate having jurisdiction for allowance, at least once during each three-year period and more frequently if required to do so by the will or trust instrument creating the trust. Periodic accounts for filing only may be submitted to the court at any time during each three-year period. Upon receipt of a periodic account, the court shall cause notice of it and of its availability for examination at the court to be given in such manner and to such parties as it deems reasonable. Any such party may apply to the court for a hearing on the account. If an application for such a hearing is not received by the court from a party in interest within the time stated in the notice, the periodic account will be filed without hearing thereon and without allowance or disallowance thereof, and shall not be recorded. At the end of each three-year period from the date of the last allowance of a periodic account, or upon the earlier receipt of a final account, there shall be a hearing on all periodic accounts not previously allowed, and the final account, if any, in accordance with sections 45a-178 and 45a-179.

(b) Each such periodic account shall include an inventory of the trust estate showing fully how the principal of the fund is invested and the items of income and expenditure. If there has been no change in the identity of the items comprising the principal of the fund since the last account which has been accepted and approved, it shall not be necessary to include an inventory of the trust estate.

(c) If the estate held by any person in any such fiduciary capacity is less than two thousand dollars, or, in the case of a corporate fiduciary under the supervision of the commissioner of banking or any other fiduciary bonded by a surety company authorized to do business in this state, ten thousand dollars, he shall be not required to render such account unless so ordered by the court.

Sec. 45a-178. Allowance of interim accounts. Notice and hearing. The court of probate shall direct what notice, if any, shall be given to the parties in interest of the filing of any account described in section 45a-177, and of the hearing thereon, and may adjust and allow the account. The court may make any order necessary and proper to secure the execution of the duties of such fiduciary, subject to appeal as in other cases.

Sec. 45a-179. Notice and hearing on final accounts. When an executor, administrator, conservator, guardian, trustee in insolvency or trustee of a testamentary trust exhibits his final account to the court of probate for allowance, the court shall appoint a time and place for a hearing on the account and shall cause notice of the hearing to be given as it directs. Such fiduciary shall swear or affirm under oath to the truth of the account.

Sec. 45a-242. Replacement of fiduciary. (a) **Removal of fiduciary for cause.** If any fiduciary becomes incapable of executing his trust, neglects to perform the duties of his trust, wastes the estate in his charge, or fails to furnish any additional or substitute probate bond ordered by the court, the court of probate having jurisdiction may, upon its own motion, or upon the application and complaint of any person interested or of the surety upon the fiduciary's probate bond, after notice and a hearing, remove such fiduciary.

(b) **Resignation of fiduciary.** The court of probate, after notice and hearing, may accept or reject the written resignation of any fiduciary, but such resignation shall not be accepted until such fiduciary has fully and finally accounted for the administration of his trust to the acceptance of such court.

(c) **Resignation or removal of testamentary trustee or guardian.** Trustees appointed by a testator to execute a trust created by will and testamentary guardians may resign or be removed, and the vacancies filled by the court having jurisdiction in the manner provided under this section, unless otherwise provided by the will.

(d) **Appointment of successor fiduciary. Bond.** Except as otherwise provided in subsection (c) of this section, upon the death, removal or acceptance of the resignation of any fiduciary before the completion of his duties, the court of probate may appoint a suitable person to fill the resultant vacancy and such successor fiduciary shall give a probate bond.

(e) Effect on lawsuits. All suits in favor of or against the original fiduciary shall survive to and may be prosecuted by or against the person appointed to succeed him.

Sec. 45a-473. Bonds of testamentary trustees. When a testator has appointed a trustee to execute a trust created by his will, the court of probate having jurisdiction of the settlement of his estate shall, unless otherwise provided in the will, require of such trustee a probate bond. If any trustee refuses to give such bond, the refusal shall be deemed a refusal to accept or perform the duties of such trust; but the bond without surety of any public or charitable corporation or cemetery association to which any bequest or devise is made in trust shall be deemed sufficient. Whenever by any will it is provided that the trustee or trustees thereunder shall not be required to give a probate bond, or shall be required to give a bond which in the judgment of the court of probate having jurisdiction is insecure or inadequate, the court may, upon the application of any person interested, require such trustee or trustees at any time to furnish a probate bond in accordance with section 45a-139.

Sec. 45a-474. Vacancies in office of trustee.
When any person has been appointed trustee of any estate, or holds as trustee the proceeds of any estate sold, and no provision is made by law or by the instrument under which his appointment is derived for the contingency of his death or incapacity or for his refusal to accept such trust or for his resignation of such trust, or when a trust has been created by will and no trustee has been appointed in the will or when more than one trustee has been appointed and thereafter a trustee so appointed dies, becomes incapable, refuses to accept or resigns such trust, the court of probate of the district within which the estate is situated, or, when the trust has been created by will, in the district having jurisdiction of such will, may, on the happening of any such contingency, appoint some suitable person to fill such vacancy, taking from him a probate bond, unless in the case of a will it is otherwise provided therein, in which case the provisions of section 45a-473 shall apply.

Sec. 45a-481. Distribution by testamentary trustee upon completion of trust. The trustee of any testamentary trust which has terminated may, unless the will creating the trust otherwise directs, after settling his final account, deliver the property remaining in his hands to the remainderman upon the order of the probate court, without returning the same to the estate of the decedent.

Sec. 45a-482. Distribution of assets of inoperative trust. When the facts at the time of distribution from an estate to a trust or from a testamentary trust to a successive trust are such that no trust would be operative under the terms of the instrument creating such trust or successive trust because of the death of the life tenant, or because the beneficiary has reached a stipulated age, or for any other reason, the fiduciary of such estate or prior trust may distribute, with the approval of the court of probate having jurisdiction, directly from the estate or prior trust to the remaindermen of such trust, the corpus of such trust and any income earned during the period of estate administration or administration of the prior trust and distributable to such remaindermen, without the interposition of the establishment of such trust or successive trust.

Sec. 45a-483. Settlement of trust estate when beneficiary has been absent seven years. The trustee of any trust for the benefit of any person who has been absent from his home and unheard of for seven years or more may settle his account as such trustee in the court of probate having jurisdiction thereof. Upon the order of the court, the trustee shall distribute such trust estate to the persons entitled to the remainder thereof as determined by the court, and the trustee shall not thereafter be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof. A person shall not be entitled to receive any portion of such estate from the trustee until such person has filed in the court of probate a bond with surety to the acceptance of the court, payable to the state, conditioned to return such trust estate to the trustee or his successor on the reappearance of the person presumed to be dead within thirteen years from the date of such order authorizing distribution. After the expiration of such thirteen-year period, such person entitled to the remainder shall not be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof.